

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 444 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

AMINABEN WIDOW OF YUSUFBHAI ABDULGANI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR RAJESH K DESAI for Petitioner

MR UDAY BHATT ADDL PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 08/10/1999

ORAL JUDGEMENT

#. Rule. Mr.Uday Bhatt, learned APP waives service of rule for the respondent State. Heard Mr.Rajesh Desai, learned advocate appearing for the petitioner and Mr.Uday Bhatt, learned APP. The petitioner is the widow of deceased Yusufbhai Abdulgani Shaikh - original accused of Criminal Case No : 1036 of 1984 tried by the learned Chief Judicial Magistrate, Kheda at Nadiad. According to the petitioner, her husband was prosecuted for the

offences punishable under Section 409 and 477 A of Indian Penal Code and was held guilty of the offences punishable for the both these above offences and was imposed substantive sentence of 6 months along with punishment of fine. The accused Yusufbhai Abdulgani Shaikh , being aggrieved by the aforesaid order, filed appeal in the Court of Sessions of District Kheda at Nadiad and the same was admitted. The certified copy produced at Page-7 goes to show that the appeal preferred by Yusufbhai Abdulgani Shaikh was admitted on 16th February,1989. According to the petitioner, her deceased husband was keen to see that he is acquitted from the charges levelled against him but before he could succeed in the appeal, he expired on 25th May, 1999. The learned advocate representing her deceased husband produced a death certificate in the Court of Sessions and the learned Session Judge without appreciating the anxiety of the petitioner, treated the appeal abated vide order dated 29th May, 1999.

#. In the early days of the death, it was not possible for her to approach the Sessions Court and to pray for that she intends to continue with the appeal and also desirous to see that her husband is exonerated from the charges levelled against him. It is submitted by the learned advocate appearing that as there was no scope for the petitioner to approach the Sessions Court in view of the order passed on 29th May, 1999, the petitioner was obliged to file the present revision application before this Court.

#. It is not necessary to discuss the settled legal position in this regard and the learned APP Mr.Uday Bhatt has fairly conceded that the legal representatives are entitled to continue with the appeal pending at the time of death of convict accused and can also carry the litigation till its legal conclusion. So appeal treated as abated by the learned Sessions Judge, shall have to be revived and the learned Sessions Judge is directed to hear the appeal on merits considering the submissions made by the present petitioner - widow of the deceased convict. Therefore, in view of the above facts and circumstances of the case, I am inclined to allow this revision application. The order passed below the application filed by the learned advocate of the deceased appellant (Husband of the present petitioner) dated 29th May, 1999 is hereby quashed and set aside. The appeal No : 6 / 1989 is ordered to be revived. The learned Sessions Judge, Kheda at Nadiad is directed to hear and decide this appeal on merits treating wife of the deceased as appellant. Rule is accordingly made

absolute. Direct Service is permitted.

Date : 8-10-1999 [C.K.Buch, J.]

#kailash#